

referred to as the “Federal Tort Claims Act.” Liability of the United States Department of Veteran Affairs is predicated specifically on Title 28 U.S.C. §§ 1346(b)(1) and 2674 because of personal injuries and resulting damages of which complaint is made were proximately caused by the negligence, wrongful acts and/or omission of employees of the United States of America, Department of Veterans Affairs, at the Michael E. DeBakey Veterans Affairs Medical Center, Houston, Texas, while acting within the scope of their office or employment, under circumstances where the United States of America, if a private person would be liable to Plaintiffs in the same manner and to the same extent as a private individual.

2. Plaintiffs are seeking money damages resulting from the death of Larry Ellis Sr., due to the negligent and/or wrongful act(s) and/or omission(s) by MICHAEL E. DEBAKEY VETERAN AFFAIRS MEDICAL CENTER, DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and DR. KUMUDHA RAMASUBBU, KEVIN CURTIS, and/or any other agents and/or employees of Defendant that treated, supervised, monitored, and/or cared for Larry Ellis Sr., and that while acting within the scope of their employment and/or office and under circumstances where the United States, if a private person, would be liable to Plaintiffs in accordance with the laws of Texas where the negligence and/or wrongful conduct occurred.

II. JURISDICTION & VENUE

3. Plaintiffs assert claims of Malpractice and Negligence against Defendant pursuant to 38 U.S.C. § 7316.

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C.A. §1346(b)(1), 2671-2680 et seq., commonly known as the “Federal Tort Claims Act”, which vests exclusive subject matter jurisdiction of Federal Tort Claims litigation in the Federal District Court.
5. Venue is proper pursuant to 28 U.S.C.A. §§1391(b)(1).

III. PARTIES

6. Plaintiffs are citizens and residents of the United States and of the city of Houston of the State of Texas.
7. Defendant UNITED STATES DEPARTMENT OF VETERANS AFFAIRS (“Defendant” and/or “VA”) is the second largest of the fifteen Cabinet departments of the United States executive branch and operates nationwide programs for health care, financial assistance, and burial benefits to support Veterans and their families and at all relevant times herein, is responsible for the operations at Michael E. DeBakey Department of Veterans Affairs Medical Center in Houston, Texas. (“MEDBVAMC”).
8. Defendant United States Department of Veteran Affairs is, and, all times material hereto is a governmental agency of the United States of America operating its health care services under the agency of the Veterans Health Administration. As part of its mandate Defendant VA offers certain health care services to veterans of the armed forces of the United States. It offers these health care services from a number of Veterans Health Administration operated hospitals and clinics across the country. In particular, Defendant VA owns, operates and/or controls health care facility in Houston, Texas, known as Michael E. DeBakey Veterans Affairs Medical Center. (“MEDBVAMC”).
9. In operating the Michael DeBakey Veterans Affairs Medical Center, Defendant VA, at all times material hereto, held itself out to the public as a facility well-skilled in offering

medical care, supervision, treatment, training, patient rights, and as a hospital that upheld high standards with regard to the practice of medicine therein. In this case, Defendant VA was performing a governmental function designed to benefit Plaintiffs in assessing the physical safety of Plaintiff Clara Ellis's spouse, Larry Ellis Sr., decedent and Plaintiff Larry Ellis Jr.'s father and as providers of healthcare and postmortem care. Defendant VA, as a federal agency, having hired, provided supervision and training of its employees is liable for negligent actions carried out in the performance of its official duties. Defendant negligently performed its governmental functions. Plaintiffs were owed a duty of care by the Defendant, and there has been a breach of that duty. Defendant's breach of duty toward the Plaintiffs and conduct fell short of the standard expectation of a reasonable person.

**IV.
VICARIOUS LIABILITY-RESPONDEAT SUPERIOR**

10. Whenever in this pleading it is alleged that Defendant VA did any act or thing, or failed to do any act or thing, it is meant that Defendant VA's officers, owners, servants, employees, or representatives including but not limited to MICHAEL E. DEBAKEY VETERAN AFFAIRS MEDICAL CENTER, DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and DR. KUMUDHA RAMASUBBU and/or KEVIN CURTIS, did such act or thing, or failed to do such act or thing, or that such act or thing or omission was done in the course and scope of that person's employment at Defendant VA, or in the furtherance of Defendant VA's interests, or with the full authorization, permission, tolerance, and/or ratification of Defendant VA, or was done by an authorized member of management of Defendant VA

or was done in the normal routine of the accepted, tolerated, or permitted conduct, customs, and/or practices of Defendant VA's officers, owners, servants, employees, and/or representatives.

11. At all times relevant herein, DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and DR. KUMUDHA RAMASUBBU were licensed to practice Harris County, Texas as agents, servants, or employees of Michael E. DeBakey Veteran Affairs Medical Center owned, controlled and/or operated by Defendant VA, and were responsible for monitoring, treating, caring, supervising and/or overseeing the health care treatment of Larry Ellis Sr., decedent, while obtaining medical services, care, and treatment at Michael E. DeBakey Veteran Affairs Medical Center.
12. Further, at all relevant times herein, DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and DR. KUMUDHA RAMASUBBU held themselves out to the public and to Larry Ellis Sr., decedent, and Plaintiffs as well-skilled in their areas of practice.
13. Based on information and belief, Defendant VA as owners, controllers, operators, overseers of Michael E. DeBakey Veteran Affairs Medical Center ("MEDBVAMC"), MEDBVAMC maintained supervisory authority over DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and DR. KUMUDHA RAMASUBBU, all of which cared and treated Larry Ellis Sr., decedent,

and of whom supervised and treated Larry Ellis Sr. and the actions which made the basis of this matter, resulting in this complaint.

14. At all relevant times herein, DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and DR. KUMUDHA RAMASUBBU were performing governmental function(s) designed to benefit the Plaintiffs' spouse and father in assessing the physical safety of Plaintiffs' father and spouse who was ill and in need of a surgical procedure.
15. Defendant VA negligently performed its governmental functions. Plaintiffs were owed a duty of care by Defendant, and there has been a breach of that duty. Defendant's breach of that duty toward Plaintiffs, conduct fell short of the standard expected of a reasonable person.

V. FACTS

16. MEDBVAMC is an entity owned and operated by Defendant VA, an agency of the USA.
17. At all relevant times herein, Defendant VA directed and controlled the actions of MEDBVAMC.
18. Larry Ellis Sr., (hereinafter "Decedent"), was at all times relevant herein a veteran of the United States military and was a patient at MEDBVAC for purposes of receiving medical treatment.
19. Decedent obtained all of his medical treatment from MEDBVAMC.
20. Decedent was hospitalized on or about January 28, 2011 until March 25, 2011. During one of Decedent's medical visits to MEDBVAMC, it was discovered by MEDBVAMC doctors, including, but not limited to, DR. ERICK SHINSEKI, DR. SHADI

FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU that Decedent had a tumor on his adrylan gland, which required surgery in order to remove the tumor. The medical records indicate that due to Decedent's health condition at the time, that any surgical procedure would be *high risk*. However, MEDBVAMC doctors including, but not limited to, DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU ultimately determined that surgery was necessary on Decedent and scheduled him for surgery.

21. On or about January 28, 2011, Decedent went to MEDBVAMC for his pre-screening visit.¹ Decedent's wife, Plaintiff Clara Ellis, and siblings, Louise Ellis and Pan Ellis were also in attendance at the pre-screening. At the pre-screening Plaintiff Clara Ellis, Louise Ellis, and Pan Ellis all shared with the doctors, including, but not limited to, DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all doctors in attendance during the pre-screening that Decedent was allergic to anesthesia and that for the upcoming surgery; he would need to take a local sedative.
22. At all times relevant herein, the treating physicians, staff, personal, and/or providers at MEDBVAMC, including, but not limited to, DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR

¹ Refer to Larry Ellis Medical Records-Pre-OP Anesthesia Physician Evaluation Note, dated 01/27/2011

S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU were aware that Decedent was allergic to anesthesia, and that proof of this knowledge was well documented in Decedent's medical records.²

23. During the pre-screening, Plaintiff Clara Ellis went on to inform the treating doctors, including, but not limited to, DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all physicians present during the visit, that circa 1999, Decedent was treated at Southwest Memorial Hermann and it was discovered then, that Decedent was allergic to anesthesia, and that the anesthesia caused Decedent's heart to stop. The MEDBVAMC treating doctors attending the pre-screening, including, but not limited to, DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU, informed Plaintiff and Decedent's family, that they would obtain those medical records to review in preparation for Decedent's upcoming surgery.

24. On January 28, 2011, Decedent was admitted into MEDBVAMC for surgery and was taken to be prepped for surgery. During the surgery prep, Plaintiff Clara Ellis asked the treating doctors to check Decedent's blood pressure because it was high. The doctors, including, but not limited to, DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR.

² Id, "Patient experience cardiac arrest during anesthesia induction in 1999 resulting in SICU admission/ventilatory support for coma x 4 days at Southwest memorial Hermann.", also see Medical Records-Allopathic and Osteopathic Physician, dated 02/10/2011; also see, General Surgery (Bronze) Inpatient Note, dated 01/28/2011, " based on this....and the h/o [or history of] prior cardiac arrest during anesthetic induction, we have decided that it is not safe to proceed with this operation."

JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU ignored Plaintiff's request and proceeded to transfer Decedent toward the surgery room. Furthermore, even after Plaintiff's attempt to inform the doctors about her husband struggling to breathe, the doctors persisted to mess with the respirator, causing decedent to go into cardiac arrest.

25. On or about February 4 2011, Decedent was prepped for the second surgery, however this time, the MEDBVAMC doctors administered anesthesia to Decedent³. Decedent's heart went into cardiac arrest.
26. On or about March 24, 2011 as a result of MEDBVAMC's doctor's negligence, Plaintiff Clara Ellis filed a notice complaint against Defendant VA.
27. In retaliation to Plaintiff Clara Ellis filing a formal notice complaint against the VA on March 24, 2011 MEDBVAMC released Decedent despite the fact that his medical health required that he remain in the hospital. In fact, the medical records reflect that the decedent was to obtain three months of therapy due to his condition.
28. As a direct consequence of Defendant releasing decedent and despite a decline in health his due to negligence on the part of Defendant, decedent died three days later at his home on March 28, 2011.
29. After Defendant's consistent obstruction of Plaintiff's rights by giving excessive runaround, willful neglect in communication with Plaintiff by taking advantage of Plaintiffs state of mind in knowing Plaintiff lacked the knowledge of the process after filing a claim, it was not until December 6, 2012 that Defendant sent formal notice that they had denied her claim.

³ Refer to Larry Ellis Medical Records- SICU Impatient Note, dated 02/04/2011;02/09/2011

30. Plaintiff then promptly requested reconsideration on or about April 29, 2013. Plaintiff also informed Kevin Curtis, who is in charge of the MEDBVAMC legal department, about Dr. James Schrodick's lack of communication, giving the runaround, and failing to submit her previous tort claim in a timely manner. Again, after extensive runaround and failure to communicate as to the cause of excessive delay, the claim was eventually denied on or about August 20, 2013.
31. Immediately after Plaintiff received the reconsideration denial, Plaintiff spoke with Mr. Wolf giving a verbal request for reconsideration again. It is then that Mr. Wolf told Plaintiff "they are giving you the runaround and something is wrong with this case." This further prompted Plaintiff to look for more evidence regarding this matter.
32. Finally, when Plaintiff obtained more evidence and medical records she contacted Kevin Curtis who told Plaintiff that *he will be able to help her only if she can provide more evidence*. This occurred in March of 2016. Plaintiff faxed Kevin Curtis the evidence and her records. It was then Plaintiff's claim was approved in April 2016.
33. On May 11, 2016, Plaintiff filed this suit.
34. Plaintiff complied with all conditions precedent and notice requirements set forth in the Federal Tort Claims Act necessary to bring this cause of action against Defendant VA when she filed her formal complaint on May 11, 2016 with MEDBVAMC located at 2002 Holcombe Blvd., Houston, Texas. Additionally, Plaintiff's claims are jurisdictional in nature and allow for equitable tolling to apply.
35. At all times relevant herein, Plaintiff Larry Ellis Jr., was a minor during the incident made basis of this suit and was not aware of the claims that his mother was filing due to his father's medical treatment and death. Plaintiff Clara Ellis did not tell Plaintiff Larry

Ellis Jr. about the incident so as to not bother him emotionally and mentally considering he was a minor.

36. After decedent's death, Plaintiff Larry Ellis Jr. went off to college and was thus unable to remain privy in the incidents occurring back home and relating to the suit.

37. Plaintiff Larry Ellis Jr. later discovered the incidents that occurred through media attention and after he turned twenty-one (21) years old recently, and thus the discovery rule applies here.

38. Furthermore, now Larry Ellis Jr. files lawsuit as an individual claimant.

VI. CAUSES OF ACTIONS

A. COUNT I: MALPRACTICE

39. Plaintiffs re-allege and incorporates by reference paragraphs 1 through 38 as if fully stated herein.

40. Larry Ellis Sr., decedent, was owed a duty of care by DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all doctors of which cared and treated Larry Ellis Sr., decedent, and of whom supervised and treated Larry Ellis Sr., decedent.

41. DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all doctors of which cared and treated Larry Ellis Sr., decedent, and of whom supervised and treated Larry Ellis Sr., decedent's duty of care was defined by professional and ethical standards for a physician treating a patient for surgery.

42. Defendants DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all doctors of which cared and treated Larry Ellis Sr., decedent, and of whom supervised and treated Larry Ellis Sr., breached their duty of care by administering anesthesia and releasing decedent earlier than necessary causing death.

B. COUNT II: BREACH OF FIDUCIARY DUTY (SPECIAL RELATIONSHIP)

43. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 42 as if fully stated herein.

44. Defendants owed a fiduciary duty to Larry Ellis Sr., decedent, arising from the nature of the relationship.

45. Larry Ellis Sr., decedent, was at all relevant times a patient Michael E. DeBakey seeking medical care and treatment.

46. Said relationship encompassed physician-patient and surgeon-patient relationship.

47. Defendants breached their fiduciary duty to Larry Ellis, Sr., either directly or through the doctrine of respondeat superior, when DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all doctors in attendance during the pre-screening, acting in the course and scope of their duties as an agent and/or employee of Michael E. DeBakey, utilized their position as an medical physician and surgeon to engage in negligent conduct by willfully disregarding Larry Ellis Sr., decedent's, medical history and allergy symptoms in preparation for Larry Ellis Sr.'s surgery.

48. Defendants further breached their fiduciary duty to Larry Ellis, Sr., decedent, either directly or through the doctrine of *respondeat superior*, when DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all doctors in attendance during the surgery administered the anesthesia to Larry Ellis Sr., despite all warnings made by Plaintiff Clara Ellis, Larry Ellis Sr., and Larry Ellis's medical records which all indicated that he was allergic to anesthesia and if he was given such, his heart would stop and released him early without the necessary therapy.

49. As a direct and proximate result of these breaches of fiduciary duty Plaintiffs suffered the loss of their loved one, husband and father. Additionally, Plaintiffs suffered loss of household income, loss of consortium, relocation costs, funeral expenses, medical expenses, etc.

50. As a direct and proximate result of these breaches of fiduciary duty Plaintiffs suffered stress, trauma, depression, anxiety, insomnia, mental anguish.

C. COUNT III: NEGLIGENT SUPERVISION

51. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 50 as if fully stated herein.

52. DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all doctors in attendance during the pre-screening had physician-patient relationships with Larry Ellis Sr., decedent, arising out of their employment at Michael E. DeBakey.

53. DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all doctors in attendance during the pre-screening met with Larry Ellis Sr., decedent prior to surgery preparation at Michael E. DeBakey.
54. Defendant VA, knew and/or should have known of their ability to control DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all doctors in attendance during the pre-screening through enforcement of workplace regulations and guidelines.
55. Defendant VA, knew and/or should have known of the need to control DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all doctors in attendance during the pre-screening based on policies and procedures of By Michael E. DeBakey's employee guidelines.
56. Defendant VA, knew and/or should have known of the need to control DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all doctors of which cared and treated Larry Ellis Sr., decedent, and of whom supervised and treated Larry Ellis Sr., decedent.
57. As a direct and proximate result of Defendant VA, failure to act reasonably and control the actions of DR. ERICK SHINSEKI, DR. SHADI FOBREIDAT, DR. JAMES

SCHRODICK, as the Assistant Chief of Staff, DR. SAMIR S. AWAD, DR. JOSEPH (anesthesiologist), DR. BERGER and/or DR. KUMUDHA RAMASUBBU and/or all doctors of which cared and treated Larry Ellis Sr., decedent, and of whom supervised and treated Larry Ellis Sr., decedent, Larry Ellis Sr. died. Further as a result of Defendants acts, Plaintiffs suffered stress, trauma, mental anguish, loss of consortium, insomnia, depression, pain and suffering, medical expenses, funeral expenses, etc.

JURY DEMAND IS HEREBY REQUESTED

58. Plaintiff requests that this action be heard before a jury.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that this Court award them relief and judgment against Defendant United States Department of Veteran Affairs for damages, costs, and for any and all further relief this Honorable Court may deem just and proper.

Respectfully submitted,

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